

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| | | |
|---|---|------------------------|
| In re U.S. Patent No.: 7,372,941 |) | |
| |) | |
| Issue Date: May 13, 2008 |) | Group Art Unit: 2882 |
| |) | |
| Igor IVANISEVIC et al. |) | Examiner: Allen C. Ho |
| |) | |
| Application No.: 10/635,113 |) | Confirmation No.: 2064 |
| |) | |
| Filed: August 6, 2003 |) | |
| |) | |
| For: SYSTEM AND METHOD FOR |) | |
| MATCHING DIFFRACTION PATTERNS |) | |

Mail Stop Petition

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**PETITION UNDER 37 C.F.R. § 1.183 FOR WAIVER
OF THE REQUIREMENT UNDER 37 C.F.R. § 1.705(d)**

Pursuant to 37 C.F.R. § 1.183, Patentee petitions the Commissioner to waive the requirements of 37 C.F.R. § 1.705(d) that any request for reconsideration of the patent term adjustment indicated in an issued patent must be filed within two months of the date the patent issues. The required fee of \$400.00 for the petition under 37 C.F.R. § 1.183 is enclosed.

The U.S. Patent Trademark Office (USPTO) issued the above-referenced U.S. Patent No. 7,372,941 ("the '941 patent") on May 13, 2008, with a patent term adjustment (PTA) of 494 days. Subsequently, on September 30, 2008, U.S. District Court for the District of Columbia ruled in *Wyeth v. Dudas* that the USPTO had made an

error in the manner it determined PTA. Specifically, the court's decision relates to situations in which separate time periods of PTA accrue due to PTO examination delay and those time periods do not overlap. The court ruled that in such situations, the PTA should be determined as the sum of the term adjustments of the respective separate time periods, rather than the greater one of the term adjustments, the latter practice being the PTO's manner of PTA determination used to date.

Patentee requests waiver of Rule 1.705(d) to permit filing and consideration of the accompanying Determination of Patent Term Adjustment - Post Grant, in which patentee requests a change in the PTA based on determination in a manner consistent with the court's decision referred to above.

This Petition is accompanied by the required petition fee of \$400.00, as set forth in 37 C.F.R. § 1.17(f). If there are any other fees due in connection with the filing of this Petition, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: November 7, 2008

By: /Carlos M. Téllez/
Carlos M. Téllez
Reg. No. 48,638
(202) 408-4123